

October 7, 2003

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Jurisdictional
Determination, Application No. 2003-01972(0)

Mr. Donald L. Coogan
Terrestrial Environmental Specialists, Inc.
23 County Route 6
Suite A
Phoenix, New York 13135

Dear Mr. Coogan:

This pertains to the request of your client, Greenfield Homes, L.L.C., for a jurisdictional determination on a 147-acre property planned for a residential development called Highland Meadows. The project in question is located north of NYS Route 370 and 31 and east of Route I-690, Town of Lysander, Onondaga County, New York.

In a court case, Solid Waste Agency of Northern Cook County v. the U.S. Army Corps of Engineers, No.99-1178 dated 1/2001, heard by the Supreme Court, the justices looked at the issue of isolated waters and whether the Corps of Engineers has the authority to regulate these areas under the Clean Water Act. Specifically, the case involved statutory and constitutional challenges to the assertion of Clean Water Act jurisdiction over isolated, non-navigable, intrastate waters used as habitat by migratory birds. Subsequently, the U.S. Supreme Court ruled such isolated wetlands are not waters of the United States, and are **not** subject to regulation under Section 404 of the Clean Water Act.

In light of the recent Supreme Court decision, I reviewed the administrative record, The National Wetland Inventory map, U.S.G.S. Quadrangle map, the Onondaga County Soil Survey and conducted a site investigation on September 16, 2003. Based on this review, I have determined that the wetlands, labeled 2 and 3 on the delineation report and the attached page 2 of 2, are isolated, non-navigable, and intrastate waters that are **not** subject to regulation under Section 404 of the Clean Water Act. Accordingly, you do not need Department of the Army authorization to commence work on wetlands, labeled 2 and 3.

Also, I have determined that the wetland, labeled 1 on the delineation report and the attached page 2 of 2, are not

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isolated, and are subject to regulation under Section 404 of the Clean Water Act. Therefore, a permit is required if you client proposes to discharge fill material into the regulated wetland, labeled 1, on the site.

The wetland delineation you submitted confirms that wetlands under Federal jurisdiction exist on the property. In this regard, I would like to point out that the Federal wetland boundary located on your property, as shown on the attached drawings, was confirmed on September 16, 2003 and will remain valid for a period of five (5) years from the date of this correspondence. Further, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Questions pertaining to this matter should be directed to me at (315) 255-8090, by writing to the following address: U.S. Army Corps of Engineers, Auburn Field Office, 7413 County House Road, Auburn, New York 13021-8964, or by e-mail at: david.l.dralle@usace.army.mil

Sincerely,

SIGNED

David L. Dralle
Biologist